

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TENNESSEE
KNOXVILLE DIVISION**

THE STATE OF TENNESSEE, et al.,)
Plaintiffs,)
v.)
UNITED STATES DEPARTMENT OF) Case No. 3:21-cv-00308
EDUCATION, et al.,)
Defendants.)

MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs are the States of Tennessee, Alabama, Alaska, Arizona, Arkansas, Georgia, Idaho, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, and West Virginia. Plaintiffs move under Federal Rule of Civil Procedure 65(a) and 5 U.S.C. § 705 for an order preliminarily enjoining the U.S. Department of Education (“Department”), the Secretary of Education, the U.S. Department of Justice (“DOJ”), the Attorney General of the United States, and the Assistant Attorney General for Civil Rights at the DOJ and their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with those individuals from enforcing the following guidance documents:

- The U.S. Department of Education’s interpretation of Title IX published in the Federal Register on June 22, 2021. Enforcement of Title IX of the Education Amendments of 1972 With Respect to Discrimination Based on Sexual Orientation and Gender Identity in Light of Bostock v. Clayton County, 86 Fed. Reg. 32,637 (June 22, 2021) (“Interpretation”).
- The “Dear Educator” letter and accompanying fact sheet issued by the U.S. Department of Education and DOJ Civil Rights Division on June 23, 2021. U.S. Dep’t of Educ., Letter to Educators on Title IX’s 49th Anniversary (June 23, 2021), <https://bit.ly/3ksLLDj>; U.S. Dep’t of Justice & U.S. Dep’t of Educ., Confronting

Anti-LGBTQI+ Harassment in Schools, <https://bit.ly/3sQjZnM> (together with the Dear Educator Letter, “Fact Sheet”).

Plaintiffs further move under Federal Rule of Civil Procedure 65(a) and 5 U.S.C. § 705 for an order preliminarily enjoining the Equal Employment Opportunity Commission (“EEOC”), the EEOC Chair, the DOJ, the Attorney General of the United States, and the Assistant Attorney General for Civil Rights at the DOJ and their officers, agents, servants, employees, attorneys, and any other persons who are in active concert or participation with those individuals from enforcing the following guidance document:

- The “technical assistance document” issued by the EEOC Chair on June 15, 2021. EEOC, Protections Against Employment Discrimination Based on Sexual Orientation or Gender Identity (June 15, 2021), <https://bit.ly/3zgP7iP> (“EEOC Document”).

As more fully explained in Plaintiffs’ accompanying memorandum of law, Plaintiffs are likely to succeed on their claims alleging that the Interpretation, Fact Sheet, and EEOC Document violate the Administrative Procedure Act (“APA”), 5 U.S.C. § 706. The Interpretation and Fact Sheet violate the APA’s notice-and-comment requirements; are arbitrary and capricious; conflict with Title IX; and violate the Spending Clause, the First Amendment, the Tenth Amendment, and separation-of-powers principles. The EEOC Document exceeds the EEOC’s statutory authority; violates the APA’s notice-and-comment requirements and the EEOC’s own procedural requirements; conflicts with Title VII; violates the Tenth Amendment and separation-of-powers principles; and unlawfully abrogates the States’ sovereign immunity. Preliminary relief is necessary to prevent substantial irreparable harms—interference with the States’ sovereign regulatory authority, threats to athletic opportunities for women and student and employee privacy, and the infringement of First Amendment rights, to name just a few. And preliminary relief will serve the public interest by eliminating uncertainty for regulated parties.

Plaintiffs further request that this Court hear oral argument on the motion. Oral argument is warranted because this motion raises significant questions of statutory and constitutional law and implicates the interests of employers and educational institutions across the country. Plaintiffs believe oral argument will assist the Court in deciding these important questions.

Finally, Plaintiffs request that this Court exercise its discretion to waive the security requirement of Federal Rule of Civil Procedure 65(c).

Dated: September 2, 2021

Respectfully submitted,

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*** Pro Hac Vice Application Forthcoming**

**** Admitted Pro Hac Vice**

CERTIFICATE OF SERVICE

I hereby certify that, on September 2, 2021, a true and exact copy of the foregoing document was forwarded, by certified mail, to the parties identified below:

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